94

(3)

No. 07-1361

FILED
MAY 29 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
Supreme Court of the United States

RUTH AROCHO, As Administratrix of the ESTATE OF ENRIQUE VERAS, WADAYS VERAS, and RUTH AROCHO as Parent and Natural Guardian of C.V. and Y.V.,

Petitioners,

vs.

COUNTY OF LEHIGH and DALE MEISEL,

Respondents.

On Petition For Writ Of Certiorari To The Commonwealth Court Of Pennsylvania

BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI AND APPENDIX

MATTHEW R. SORRENTINO
Lehigh County Solicitor

RUDOLPH ZIEGER
Assistant County Solicitor
Counsel of Record
CATHARINE M. ROSEBERRY
Chief Deputy Solicitor
THOMAS M. CAFFREY
Assistant County Solicitor
ELIZABETH KELLY
Deputy County Solicitor
17 South Seventh Street, Room 440
Allentown, Pennsylvania 18101-2400
(610) 782-3824
Attorneys for Respondents

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

REASONS FOR DENYING CERTIORARI

The decision to grant the Motion For Summary Judgment of Respondents, Lehigh County and Warden Dale Meisel, made first by the Lehigh County Court of Common Pleas and affirmed by a full, *en banc,* seven-judge panel of the Commonwealth Court of Pennsylvania, was correctly decided using the standard of "deliberate indifference" enunciated in *Farmer v. Brennan*, 511 U.S. 825 (1994), analyzing all of the pleadings and evidence of the circumstances specific to the former inmate, Enrique Veras. *Arocho v. County of Lehigh et al.*, No. 2003-C-3235 (Court of Common Pleas of Lehigh County, April 26, 2006); *affirmed*, 922 A.2d 1010 (Pa. Cmwlth. 2007). Thereafter, the Supreme Court of Pennsylvania correctly rejected Petitioners' invitation to grant allowance of appeal. *Arocho v. County of Lehigh et al.*, 944 A.2d 759 (Pa. 2008).

The instant Petition is meritless and presents no question worthy of the grant of certiorari. Petitioners urge this Court to clarify the standard of "deliberate indifference" enunciated in *Farmer*, *supra*, but Petitioners do so by ignoring the reality that no lack of clarity has been perceived in the standard or in its consistent application by the Circuit Courts of Appeal, notwithstanding that Circuit Courts have addressed a variety of circumstances involving prisoners who attempted or inflicted self-harm. See, e.g., *Brown v. Harris*, 240 F.3d 383 (4th Cir. 2001); *Frake v. City of Chicago*, 210 F.3d 779 (7th Cir. 2000); *Liebe v. Norton*, 157 F.3d 574 (8th Cir. 1998); *Barrie v. Grand County Utah*, 119 F.3d 862 (10th Cir. 1997);

Manarite By and Through Manarite v. City of Springfield, 957 F.2d 953 (1st Cir. 1992); *Rhyne v. Henderson County*, 973 F.2d 386 (5th Cir. 1992).

In fact, it is only because Respondents are mindful of the obligation imposed by Sup. Ct. R. 15(2), to address any misstatement in the petition bearing on issues that might be before the Court, that Respondents submit this opposing brief. Petitioners make many misstatements of fact and law, use suggestion and insinuation as techniques to misrepresent evidence and mischaracterize lower court holdings and reasoning throughout their Petition.

To open, Petitioners ignore Sup. Ct. R. 24(1)(a) by including text in addition to the questions presented on the first page of their Petition. The additional text should perhaps be disregarded for this reason alone. Additionally, the noncompliant text is the first of Petitioners' misstatements, that the Pennsylvania courts "applied a blanket prohibition to the introduction of prevailing corrections standards." Petition at p. i. In fact, Pennsylvania's Commonwealth Court applied no such prohibition. A review of the Commonwealth Court's decision reveals that the court did not foreclose all future plaintiffs from presenting evidence of industry standards in cases involving inmates with suicidal tendencies, but rather determined that in the specific circumstances involving the former inmate Mr. Veras (which were viewed in the light most favorable to the Petitioners, as required under the summary judgment analysis), the proffered corrections standards, even in combination with Petitioners' expert

witness's opinion, were not enough, in and of themselves, to show that either the County or Warden Meisel acted with deliberate indifference to the former inmate Enrique Veras. Petitioners had no other evidence to offer, testimony or otherwise, that tended to show that Respondents acted with deliberate indifference in violation of the Eighth Amendment prohibition against cruel and unusual punishment.

All that Petitioners offer now, in lieu of evidence, is a collection of misstatements, mischaracterizations and insinuations to suggest that the County acted with deliberate indifference and that the Pennsylvania courts erred at all three levels. To identify just a few significant examples, Petitioners state that the former inmate was transferred to disciplinary segregation because of his suicide attempt, thereby insinuating that the County was inflicting punishment for the suicide attempt. Petition, at p. 5, ¶1. Nevertheless, the undisputed evidence shows this is not the case. At the County prison, the suicide resistant cell was located in the administrative (non-disciplinary) and disciplinary segregation housing unit ("AS/DS"), in which inmates are housed one to a cell with more corrections officers to watch them. Placement of the former inmate on the AS/DS segregation unit was in no way intended to punish him for his suicide attempt.

Other misstatements Petitioners offer for the same purpose are (1) that Ed Sweeney, Director of Corrections at Lehigh County, stated there was no penological justification for the absence of "constant observation" in the County's suicide prevention policy,

Petition, at p. 7, ¶1; (2) that Director Sweeney "admitted that the cells used as 'suicide prevention' cells at Lehigh County Prison are not suicide resistant" and he "was aware of this deficiency," Petition, at p. 7, ¶2; (3) that Director Sweeney "understood that the cells with open-faced bars are not safe for suicidal inmates in that the open bars provide multiple ligature points," Petition, at p. 8, ¶1; and (4) that the record supports the conclusion that Lehigh County knew its housing of suicidal inmates was improper. Petition at p. 11, No. 6. All of the foregoing statements are inaccurate representations of the evidence. For this reason, Respondents appended all pertinent portions of the actual depositions to this brief so this Court may see how misleading the Petitioners' brief is. *See* Appendix, pp. 4-49.

In the remainder of the Petition, Petitioners offer this Court their own misperception of the deliberate indifference standard enunciated in *Farmer*, *supra*, by suggesting that the standard requires a court to analyze all of the actions that might have been taken by prison officials to prevent an inmate with suicidal tendencies from taking his or her own life, to next consider all of the actions actually taken by the prison and its officials to promote the safety of the former suicidal inmate and to conclude by asking whether the actions taken were reasonably calculated to succeed in light of what else could have been done. This may be what Petitioners would like the standard of deliberate indifference to be, but it is not the standard adopted by this Court in *Farmer*, *supra*. To adopt Petitioners' interpretation of the standard

would be to replace the higher standard of deliberate indifference with the lower standard of negligence, after this Court has determined that negligent actions simply do not rise to the level of cruel and unusual punishment. *Farmer,* 511 U.S. at 840.

Petitioners' misperception of the standard is the main factor that causes their fault-finding with the lower court's decision to be lacking in merit. Petitioners compound this error by making multiple misstatements and mischaracterizations of the Commonwealth Court of Pennsylvania's holdings and reasoning.

For example, Petitioners accuse the lower court of refusing to consider the opinion of its expert witness, Lindsay Hayes, and misapplying principles articulated in *Bell v. Wolfish,* 441 U.S. 520 (1979). Petition at p. 19, ¶15. Petitioners also assert that the lower court misapplied, out of context, principles articulated in *Spruill v. Gillis*, 372 F.3d 218 (3d Cir. 2004). Petition at p. 15, ¶12. Finally, Petitioners cite to a recent decision of this Court addressing Equal Employment Opportunity Commission regulations, *Federal Express Corp. v. Holowecki*, ___ U.S. ___, 128 S.Ct. 1147 (2008), for a principle that is not articulated therein. Petition at p. 19, ¶15. The foregoing are identified because they are the more glaring examples of Petitioners' overreaching misstatements and mischaracterizations.

It is necessary only to read the well-reasoned opinion of the Commonwealth Court of Pennsylvania to see the extent of the Petitioners' misstatements, so

Respondents will not take up this able Court's time by parsing the Pennsylvania court's opinion here. To assist this Court in its reading of that opinion, Respondents have supplied the text from that opinion that was omitted from Petitioners' appendix, which erroneously printed page 31 twice after page 29 and omitted page 30. Petition, App. Vol. I, p. 29, 31. *See* Appendix, pp. 1-3.

CONCLUSION

The Petition presented here is an end-stage attempt on behalf of a disappointed client, and it is completely lacking in merit for all of the reasons set forth above. Respondents request this Court to deny the Petition for Writ of Certiorari and allow the decision of the Commonwealth Court of Pennsylvania to stand.

Respectfully submitted,

MATTHEW R. SORRENTINO
Lehigh County Solicitor

RUDOLPH ZIEGER
Assistant County Solicitor
Counsel of Record
CATHARINE M. ROSEBERRY
Chief Deputy Solicitor
THOMAS M. CAFFREY
Assistant County Solicitor
ELIZABETH KELLY
Deputy County Solicitor
17 South Seventh Street, Room 440
Allentown, Pennsylvania 18101-2400
(610) 782-3824
Attorneys for Respondents

IN THE COMMONWEALTH COURT
OF PENNSYLVANIA

Ruth Arocho, As Administratrix of the Estate of Enrique Rene Veras and Wadays Veras and Ruth Arocho as Parent and Guardian of Crystal Veras and Yashera Veras, Appellants	:	
v.	:	No. 1008 C.D. 2006
County of Lehigh and Dale Meisel	:	Argued: December 13, 2006

BEFORE:

HONORABLE JAMES GARDNER COLINS, President Judge
HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE MARY HANNAH LEAVITT, Judge

OPINION
BY JUDGE LEAVITT FILED: May 3, 2007

The children and estate (Estate) of Enrique Veras (Decedent),[1] who committed suicide while incarcerated at the Lehigh County Prison (Prison) on December 5, 2002, appeal a judgment of the Court of Common Pleas of Lehigh County (trial court). By this judgment, the trial court held that the Estate could not sustain its 42 U.S.C. §1983 action for damages against Dale Meisel, the Prison Warden, or against Lehigh County for their alleged violations of Decedent's constitutional rights. In this case we consider whether the trial court erred by

* * *

This Court has expressly adopted the *Trigalet* analysis. *Thomas v. City of Philadelphia,* 804 A.2d 97, 112 (Pa. Cmwlth. 2002) ("We hold, therefore, that in the absence of an underlying unconstitutional action by employees of the City . . . , we will not consider the question of whether the City [has liability] . . . ".); *Robbins v. Cumberland County Children and Youth Services,* 802 A.2d 1239, 1250-1251 (Pa. Cmwlth. 2002) (accepting the "reasoning of the vast majority of federal circuits, which adopt the general rule that a municipality cannot be liable unless there is a constitutional violation by the municipal actor causing the plaintiff's harm"). The Estate counters that this Court should follow *Fagan v. City of Vineland,* 22 F.3d

---

[1] Appellant Ruth Arocho is the administratrix of Decedent's estate and the mother of Decedent's minor children, Crystal Veras and Yashera Veras. Appellant Wadays Veras is Decedent's adult child.

1283 (3d Cir. 1994). As this Court has explained, *Fagan* has not even been followed by the Third Circuit in subsequent cases, and the *Fagan* analysis was expressly rejected by this Court in both *Thomas and Robbins. Thomas,* 804 A.2d at 111.[17]

Because the Estate failed to make the threshold showing that a municipal employee, Meisel, violated the Decedent's constitutional rights, the Estate's claim against Lehigh County fails.

Nanty-Glo

The Estate raises an additional challenge on appeal: that the trial court impermissibly relied upon oral deposition testimony in violation of the rule announced by our Supreme Court in *Borough of Nanty-Glo v. American Surety Co.*

* * *

---

[17] The Estate argues that the Third Circuit has returned to the *Fagan* approach, citing to *Brown v. Commonwealth of Pennsylvania, Department of Health Emergency Medical Services Training Institute,* 318 F.3d 473 (3d Cir. 2003). The Estate fails to understand, apparently, that this Court decided in *Thomas* and in *Robbins* to join the view of the majority of federal appellate courts in holding that a "municipality cannot be liable unless there is a constitutional violation by [a] municipal actor." *Robbins,* 802 A.2d at 1251.

IN THE COURT OF COMMON
PLEAS OF LEHIGH COUNTY
CIVIL DIVISION – LAW

RUTH AROCHO, As Administratrix of the ESTATE OF ENRIQUE RENE VERAS and WADAYS VERAS and RUTH AROCHO as Parent and Guardian of CRYSTAL VERAS and YASHERA VERAS,	:	NO. 2003-C-3235
Plaintiffs	:	
vs.	:	Jury Trial Demanded
COUNTY OF LEHIGH and DALE MEISEL,	:	
Defendants	:	

DEPOSITION OF EDWARD SWEENEY

Taken at the offices of Lehigh County Prison, 38 North Fourth Street, Allentown, Pennsylvania, on Thursday, September 8, 2005, commencing at 11:10 a.m., before Daniel R. Stout, Certified Court Reporter, Notary Public.

APPEARANCES:

HAHALIS & KOUNOUPIS
By: DAVID L. DERATZIAN, ESQUIRE
20 East Broad Street
Bethlehem, PA 18018
– For the Plaintiffs

STEVE LOUX, ESQUIRE
Department of Law, County of Lehigh
Government Center – 17 South 7th St.
Allentown, PA 18101-2400
– For the Defendants

* * *

GALLAGHER REPORTING & VIDEO, LLC
33 South Seventh Street, Suite 105
Allentown, Pennsylvania 18101

610-439-0504 1-800-366-2980

* * *

[5] Q. Can you give me your educational background?

A. Graduate of William Allen High School and a graduate of DeSales University, then St. Francis de Sales, with a degree in Business Management, Bachelor's of Science.

Q. It was DeSales University Allentown College at the time you were there?

A. St. Francis de Sales.

Q. Oh, I'm sorry, a different one.

A. No, it's now de Sales University.

Q. Okay. What year did you graduate?

A. 1990 I believe.

Q. What year did you graduate from William Allen High School?

[6] A. '79.

Q. Okay. In between high school – .

When did you enter St. Francis de Sales?

A. I'm going to say around 1988.

Q. My math would indicate you completed college in two years?

A. I had an Associate's Degree from Lehigh County Community College.

Q. I see. And when did you get that?

A. I believe I completed that in 1982.

Q. Okay. When you were at L-tri-C were you there full-time?

A. No. Well, I guess it would have been full-time. It was twelve – . Yes, it would be considered full-time.

Q. Okay. Did you maintain some full-time employment while you were at L-tri-C?

A. Yes.

Q. What was that?

A. I worked as a store clerk at a Turkey Hill Mini-market on Lehigh Street.

Q. That was a full-time job?

A. Yes.

Q. Okay. After you –

[7] A. I was the Assistant Manager.

Q. You say that with a bit of glee in your eye.

A. It was enjoyable.

Q. Okay. When you got your degree from L-tri-C did you seek some other employment?

A. I worked at Lehigh Valley Dairy for a brief time before starting to work for Lehigh County Department of Corrections in 1984.

Q. I forgot to ask what was your Associate's Degree in?

A. I think it was Business, as well.

Q. What was your first position with Lehigh County Department of Corrections?

A. Corrections Officer.

Q. How long were you a Corrections Officer for?

A. Two years.

Q. In 1984 what did the – what training were you given to assume the job of Corrections Officer?

A. Relatively little. There was an assignment made to a mentor or quote, unquote, Training Officer, who I shadowed for about two weeks, was supposed to shadow for two weeks, but it [8] was reduced to one week because I was doing so well, and that was the extent of the training.

Q. Do you remember who you were shadowing?

A. Wayne Kratzer and Charles Payne.

Q. Did you – . Well, after the Camp Hill program was started, did you go to the Camp Hill Academy as well?

A. No, I did not. The Department had started bringing in some trainers during my tenure as a CO and I had some basic Corrections Officer security training programs that we facilitated in-house with the State Department of Corrections employees providing the training.

Q. Was that between '84 and '86?

A. Yes.

* * *

[15] Q. How long were you the Warden at the interim – at the Salisbury facility?

A. Until March of 1993.

Q. By the way, Salisbury, was Salisbury remember a secure facility?

A. Yes.

Q. Other than your prior experience and educational background, what other qualifications did you need to possess to be the Warden at Salisbury?

A. Correctional experience as well as those job – I mean those educational requirements which I mentioned.

Q. And what happened in March of '93?

A. I became – I was transferred to the Warden's position here at the main prison.

Q. Does that mean you became a Warden 2?

A. Actually the – . I was reclassified – . The position of Warden 1 was reclassified to a position of Warden 2 in the year prior, so I was already at the same pay grade as I was in March of '93. It was an administrative decision made by the then Director of Corrections to switch his two Warden 2's to have Warden Meisel transferred to the Salisbury and myself transferred to here.

[16] Q. Okay. Who was the Director of Corrections at that time?

A. Richard Klotz.

Q. Who I believe was your immediate predecessor, as well, is that right?

A. As the Director, yes.

Q. Okay. And how long were you the Warden here? You actually were the Warden here, correct?

A. Yes. From March of 1993 until I believe it was July of 1999, when I was appointed as the Director of Corrections. I maintained the responsibility of the Warden until February of 2002. I wore two hats for that time frame between '99 and '02.

Q. Is Director of Corrections an appointed or hired position?

A. It is appointed.

Q. By whom?

A. The County Executive, with confirmation by the Board of Commissioners.

Q. Did you have any competition for the position that you know of?

A. Not that I know of.

Q. Who was the County Executive at that time?

* * *

[17] Q. Other than the formal education you've discussed before and any on-the-job training that you've gotten through the prison, have you pursued any unstructured education in the field of corrections, Penology, or anything of that nature?

A. Yes.

Q. Can you tell me about that?

A. At least twice a year for the last fifteen years I have gone to a variety of trainings, most of which were provided by the Pennsylvania Prison Wardens Association or another association, the Pennsylvania County Prison Wardens Association, County Commissioners Association of Pennsylvania, some AJA trainings, some – American Jail Association is AJA – American Corrections Association training, training

by the National Institute of Corrections in Colorado on at least two occasions, also in Virginia with the National Institute of Corrections.

Q. Are those all the agencies that you've trained with in the last fifteen years?

A. There may have been some privately run trainings which I went to as well, but I don't recall the names of those facilitators or companies.

* * *

[20] Q. Thank you. Are there journals relating to Corrections and Penology?

A. Yes.

Q. Do you subscribe to any?

A. Correctional Law Reporter, American Jail Association.

Q. Anything else?

A. I have a lot of them sent to me. Whether I actually subscribe to them or not, I don't really know. I don't think I do. I think the only ones that we actually fill out subscription and send in every year are the two which I just mentioned.

Q. Are there others which you regularly receive that you actually –

* * *

[45] Q. Okay. Would you agree with me that there's no separate level of observation in your policy called constant observation?

A. Yes.

Q. Okay. Why not?

A. It can be ordered by the doctor.

* * *

[48] The medical practitioner makes a determination of a level of supervision, correct?

A. Yes.

Q. The policy determines what the conditions of that supervision will be, correct?

[49] A. Well, –

Q. Bad question. Let me ask it a different way.

The Medical determines the level of supervision, the policy dictates the circumstances of their custody?

A. With exceptions.

Q. Well, what are the exceptions?

A. You brought up something earlier about constant supervision.

Q. Okay.

A. There have been numerous cases where doctors have ordered constant supervision.

Q. Okay.

A. And in those cases there's been a staff person actually assigned, who sits there and continually monitors this person while they're on precautions.

* * *

[54] Q. You've never reviewed any material, seen any discussion, of solid plastic doored cells?

A. No.

Q. You've never heard of the idea of placing Plexiglas over the inside of barred cells to prevent inmates from using the bars as a hanging point?

A. No.

Q. Can you think of any reasons why those methods would not – those two ideas would not be proper suicide prevention techniques?

A. You wouldn't be able to see through it after about six months.

Q. Why do you say that?

A. Because it would be scratched, stained, smeared.

Q. Okay. Do you have any idea what the cost of a piece of one-inch Plexiglas the size of a cell door would be?

A. No, no idea.

Q. When you say scratched, what would an [55] inmate on suicide precautions scratch a door with that's made of Plexiglas or Lexan?

A. Fingernails.

Q. Did you ever try to do that?

A. No.

Q. Do you think – do you know that that's possible, to scratch Plexiglas with your fingernails?

A. No, I don't have any firsthand experience with trying to scratch. I can only say that I've seen plastic that we've done at different locations for types of small windows and things for pass-throughs which have hands around them in many cases, and they are very quickly scratched and become opaque.

Q. Okay. And that's inmates who might be wearing clothing, might have belts, might have anything in their hands, might have jewelry, correct?

A. Absolutely.

Q. And all of those things would be normally deprived – or always deprived of a person on suicide precautions, correct?

A. If you had a cell that was completely dedicated to a certain level of suicide precaution, [56] yes.

Q. Okay. When you said that the Plexiglas would become stained, how would it become stained?

A. Food, feces.

Q. Do you have any actual knowledge that Plexiglas or Lexan is porous enough to actually stain regardless of what the substance was?

A. No firsthand knowledge.

Q. Did you consult – have you ever consulted with anyone as to how to properly outfit a suicide prevention cell?

A. No.

Q. And when I say you in that scenario, I don't mean you personally necessarily, but under your direction has anybody ever inquired of any outside entity or person as to what the characteristics of a suicide prevention cell should look like or should be?

A. Not expressly. I mean I get trade magazines on an ongoing basis, I go to trade shows on an ongoing basis which show all different types of suicide related restraints and garb and things of that nature, and beds and different types of equipment, but there's never been anything that has been provided or that I have seen that is similar to [57] what you are referring.

Q. Okay. Assuming for the sake of this question, which I know is going to be a big assumption, but assuming for the sake of this question that Lexan or Plexiglas cannot be stained by feces or food and cannot be scratched with one's fingernails, can you think of any Correctional purpose to not having a solid door clear cell to use as a suicide cell?

A. Security.

Q. Okay. How would that affect security?

A. Well, it would have to have – to be of a strength in which it would withstand someone trying to come through the door.

* * *

[58] Q. Do you know how it was determined what cells should be barred and what cells should be solid?

A. No.

Q. Okay. Other than in A tower, being involved with the decision of what cells would – .

Well, when you were dealing with A [59] tower, how did you decide which ones would be barred and which ones would be solid doored?

A. Well, as I'm thinking about all of this, I believe that was actually a discussion about the fact that we didn't have any doors in A tower on 1-A. There was a whole discussion about if we should do a housing unit with no doors, and we talked about, you know, barred grill doors and opaque solid doors, and ultimately we went with no doors, and that may well have been more of what the discussion was, rather than – .

Because I don't recall any conversation – . Because 4-A is a gym, 3-A is a general population housing unit with all solid doors, 2-A is the same. There's no special housing. They're not in direct or special housing units. So they all have solid doors. So the

only discussion I would have had was on 1-A, and we went with no doors.

Q. Okay.

A. You can't get any more open and clear than that.

Q. Okay. You can't get any more clear than that.

* * *

[60] Are all of the suicide prevention cells such as they are open bar cells?

A. I believe so, yes.

Q. Okay. So my question isn't having open bar cells. I'm assuming that they're open bar cells. How was it determined which open bar cells would be ones used for inmates on suicide precautions?

A. I don't believe that there was a definitive decision being made and presented at some point along the way back before 2002 in which we [61] delineated, at least from my level, which I delineated which cells would be used for monitoring of suicide precautions, so it may well have just been one of those circumstances which evolved.

* * *

[65] Q. Are there any cells in this facility that staff is regularly within close enough proximity that they – that the inmates would be visible to them?

A. No more so than on 3-C.

Q. Now, as I understand it 3-C is a – during the day is a three Officer unit?

A. Yes.

Q. One in the booth, two roaming around?

A. Right.

Q. I don't mean to stay that in a sarcastic way, but two roving.

A. Yes.

Q. I also understand that there might be other personnel that might be roving around, there might be a Lieutenant roving around and a Sergeant might also be roving around, is that correct?

A. That's correct, and maybe a Utility, also. There's a Utility assigned to each floor and typically by practice on the third floor on many occasions the third floor Utility Officer ends up on 3-C.

* * *

[79] Now, do you – are you familiar with the concept of suicide-proofing a cell?

A. It's kind of self-evident in the statement.

Q. Well, I'm wondering does that have any special penological meaning to suicide-proof a cell?

A. Well, normally you would, if you were going to have a person in what would be a suicide precaution or a therapeutic seclusion or clinical seclusion, you would have as much out of the cell as possible,

including protrusions and things like that on the walls.

Q. Okay. Are you aware of any standards or other recommendations that indicate that a suicide-proofed cell should also have no hooks, no towel bars, and nothing that could be used as an anchor point?

A. I know that I've read that. Whether it's actually in a –

Q. Standard?

A. – standard, I'm not sure.

Q. Okay. Would you consider this cell suicide-proof, 3223?

A. The door obviously is not suicide-proof in that someone could certainly tie something to the [80] door.

The bed in and of itself is not suicide-proof in that somebody could tie something around the base of the beds itself right along the anchors.

The furniture in there is designed otherwise as being suicide-proof in that the shelf is rounded and that if there are hooks, they're breakaway suicide-precaution hooks for hanging of towels.

Q. Okay. Now, the hooks, when you say they're breakaway, in fact what they do is they collapse downward in case anyone exerts any kind of weight on it?

A. Right.

Q. As farfetched as it seems, you could actually impale yourself on those hooks, could you not?

A. They're rounded, flat, rounded metal.

Q. Meaning what? They do come to a point at the end, correct?

A. No, they're rounded. They don't come to a point.

Q. Okay. So your testimony is you could not impale yourself on the bars?

[81] A. Correct.

* * *

Q. Okay. Is there any reason you know of why a non-suicide-proof cell is being used as a suicide precaution cell?

A. We do not have any padded room, if that's what – . I mean, you know, we use cells in multiple different locations where we have inmates who might be in need of suicide precaution, but we don't have cells in all those areas that are completely stripped, as we use them for regular housing, as well.

* * *

[94] Q. Who makes psych decisions, psychological, including psychiatric decisions, for inmates? For treatment I should say?

A. The medical staff.

Q. Is it always that way?

A. Yes.

Q. And is there a reason why it's that way?

A. Standards would dictate that it's that way.

Q. Standards?

A. National Commission of Corrections Health Care Standards.

Q. Okay. Now, with your policies, like your [95] suicide policy, what's the relationship between that policy and what the medical staff can do and can order? Does that policy govern your medical staff?

A. No.

Q. Does that policy work as a guide for the medical staff?

A. Yes.

Q. What do you mean by a guide but not govern it?

A. If the doctor, as I said before, wanted to put somebody on a constant watch, he could order that, he would just write that on that form where it says other, he could write continuous, if they would feel that someone is legitimately suicidal and they want to move forward with either a 303 or a 304 type of proceeding. They initiate that.

Q. Is it correct to say then that the medical staff drives decision-making and decision-making regarding psychological issues for inmates, psychological treatment for inmates?

A. Yes.

Q. What is your role, what is your role as of December 2002 in the prison – when I say December 2002 I mean you've shed your Warden's hat, you're just the Director – in general what's your [96] role in the prison? What was your role in the prison?

A. At that point I was no longer actively involved in any of the day-to-day operations. In other words I did not review shift packs that dealt with everything that happened from the day before, I was not the person immediately contacted whenever there was a question or a concern regarding the day-to-day operations.

A lot of the issues as far as decision-making when it comes to inmate grievances or misconduct proceedings and parole recommendations, all of those type of things are at the Warden level, which I no longer dealt with any of that.

My role became more administrative oversight, trying to steer more and shape the Criminal Justice system as it interplays with the prison in order to control population and do some different things from a policy perspective.

* * *

[103] Q. Has medical staff, whether they were contract or whether they worked for you, in your knowledge ever informed you that putting an inmate, a suicidal risk inmate in a open bar cell is dangerous for that inmate?

A. No. In fact, it's just the opposite. That's where they want them.

Q. We had talked about sealed doors and open doors. The solid doors, is there a pass-through on the solid doors?

A. Some, not all.

Q. Some of them are completely sealed, some of them have pass-throughs?

A. Some of them have a pass-through.

* * *

[104] Q. Could a cell be made suicide-proof in a practical sense?

A. Well, you could certainly make a cell as suicide-proof as possible. I mean I don't think that there's any cell that is suicide-proof. I mean even if you – unless it is a cell, a bare cell with absolutely nothing in it, and I mean no cot, no anything. Any type of bunk gives an opportunity to be able to tie something to it, because even the suicide bunks that they use for restraints have places on them in order to attach the restraints. If there's any – if there's

anyplace on a bunk to be able to secure a ligature, you can certainly still commit suicide.

* * *

IN THE COURT OF COMMON PLEAS
LEHIGH COUNTY, PENNSYLVANIA

RUTH AROCHO, As Administratrix of the ESTATE OF ENRIQUE RENE VERAS and WADAYS VERAS and RUTH AROCHO as Parent and Guardian of CRYSTAL VERAS and YASHERA VERAS	:	
vs.	:	
COUNTY OF LEHIGH AND DALE MEISEL	:	NO. 2003-C-3235

DEPOSITION OF DALE MEISEL

Taken at the Lehigh County Prison, located at 38 N. 4th Street, Allentown, Pennsylvania, commencing approximately at 12:40 p.m. on **August 29, 2005**, before Maureen L. Stewart, a Registered Professional Reporter and Notary Public of the Commonwealth of Pennsylvania.

* * *

GALLAGHER REPORTING & VIDEO, LLC.
33 South Seventh Street, Suite 105
Allentown, Pennsylvania 18101
(610) 439-0504 1(800) 366-2980

* * *

[7] background and I'll try not to interrupt you, and then I'll ask you some questions about that and then

I'll ask you to give me your work background. So can you give me your educational background?

A I have a bachelor's degree in political science from Duquesne University in Pittsburgh. I have a master's in the administration of justice from Wichita State University in Wichita, Kansas. And I have a master's in business administration from Marymount University in Arlington, Virginia. I also have a paralegal certificate from Penn State.

Q In what year did you get your BA?

A '68.

Q And your administration of justice, is that an MA or an MS?

A It's an MAJ.

Q Oh, it's its own thing?

A Yes.

Q In what year did you get your MAJ?

A '76.

Q And your MBA?

A '86 or '87.

Q And your paralegal certificate?

A I got that about two or three years ago.

Q Off the record before we started, it was [8] mentioned that you were in the Army.

A Correct.

Q What years did you serve in the Army?

A From 1968 to 1988.

Q How much of that was active duty?

A All of it.

Q What was the highest rank you attained?

A Major.

Q What year were you promoted to major?

A I think that was like '78, '79.

Q In your military career did you have some specialty or some particular thing you were assigned to?

A Well, my basic branch was Military Police Corps, but I also served in the armor calvary special forces as an infantry officer and also served in the artillery as a logistics officer.

Q Could you give me which order they were?

* * *

[22] Q When you retired in 1988, what did you do?

[23] A Went job hunting.

Q Did you have any particular career in mind?

A Well, I wanted to be a school teacher, but – because I had done some self analysis and realized

that I really enjoyed teaching. Unfortunately, Pennsylvania is not friendly to people who want to be teachers, but don't have teaching degrees. So that was pretty much not a real valid career choice for me.

Q By the way, did you retire for any reason other than you had your 20 in?

A No.

Q So ultimately what did you end up deciding to do?

A Well, the stronger aspect that I knew was my security background, my military police background, and so I started to network for jobs in that field and ultimately I ended up answering a want ad for this, for Lehigh County.

Q When did you start with the Lehigh County Prison System?

A It was in February of 1989.

Q What position did you start with?

A Deputy warden.

[24] Q How long did you remain deputy warden?

A Not long.

Q Where did you go from there?

A Warden.

Q How long have you been warden?

A Well, I have been warden twice.

When did you become warden the first time? And a ballpark is okay in this juncture.

A I think it was within, like, I want to say six months, nine months.

Q Sometime in late 1989?

A Yes. It could have been earlier.

Q How did it come to be that you became warden?

A Because what happened was the director left – the first director of corrections that Lehigh County had, and then the warden moved up to director.

Q Who was that?

A That was Glenn Jeffes. And Glenn Jeffes had been the Commissioner of Corrections for the State of Pennsylvania, so he was eminently qualified. So I didn't want to work for anybody else, so I applied for the job.

Q How long did you remain warden the first time?

* * *

[26] A He gave it to me.

Q Let's go back to February of 1989 when you were deputy warden the first time.

A Yes.

Q I'm sorry, was there a difference between deputy warden in 1989 and assistant warden in 1994?

A Yes.

Q Okay. We'll come back to that sequentially, but thank you for giving me some guidance there.

Had your prior background fully prepared you to be deputy warden?

A No.

Q In what way?

A Mainly, in the complexities and the idiosyncrasies of Pennsylvania law. Corrections is corrections, you know, the general principles that [27] you apply in one prison or jail, you can generally apply elsewhere in terms of how you supervise inmates, how you supervise staff, what happens in the normal course of events inside an institution. But specific Pennsylvania law issues and how the law affects the operation, that was something that I had to learn.

Q Anything else?

A Not really.

Q What did you do to bring yourself up on the Pennsylvania idiosyncrasies?

A Studied, read the law read Title 37, asked questions, picked the brain of Glenn Jeffes, who was –

Q Eminently qualified to have his brain picked?

A – a rich resource of corrections experience, 30 years. He was a real dynamo, so someone that definitely one could learn from.

Q Did you have to do anything else when you became warden the first time? Was there anything else you had to do to assume whatever duties additional were thrust upon you as warden?

A Are you asking me if there were some qualifications or some training or something that I [28] had to undergo?

Q That works.

A No.

Q Did you feel yourself fully prepared to be warden the first time?

A No.

Q Is there anything that you chose to do to increase your, for lack of a better word, skillset to be warden?

A Again, it was a question of reading, researching, asking questions, that sort of thing.

Q Aside from experience, aside from the degrees you have already told me about, have you had any other formal education touching upon corrections?

A No. I mean, I took the paralegal courses specifically so that I could better understand the law as it applied to corrections.

Q And you said you went to Penn State?

A Yes.

Q Or you got it from Penn State?

A Yes.

Q Was that an actual in residence program or –

A No, it was night school.

* * *

[31] Q That are considered to be authoritative, in other words, if you walked into any warden's office, you are likely to see a particular set of books?

A Not like the law books in a law library. I think it is up to the interests of a particular warden. I mean, you can walk into my office and see rather an eclectic selection of books. The Internet and the National Institute of Corrections, NIC, does regularly publish various studies and documents of all kinds.

Q Are there any newsletters that might not be considered periodicals that you regularly read?

A No. I get Security Management, which is the publication of IASIS, International American Society of Industrial Security.

Q Do you ever read any newsletter called Jail Suicide Mental Health Update?

A I have seen that, yes.

Q Is that something you subscribe to?

A No.

Q Do you normally access that by downloading it?

A I'm not sure that I have ever downloaded it. I have typically seen it in hard copy.

* * *

[34] Q Under the policies that stood in 1995, as assistant warden what information were you given on a regular basis concerning inmates who had been identified as suicide risks, if any?

A The only information that I received regularly was through the shift packet that was produced on a 24-hour basis.

Q Now, Captain McFadden has told us about shift packages that he got in the normal course of his duties as captain. Is that the same packet that you would have gotten as assistant warden?

A Exactly the same.

Q Has the composition of that packet changed in the last ten years?

[35] A Sure. It has evolved. Some things are added, things are taken out.

Q Is there anything you would have gotten as assistant warden in 1995 that Captain McFadden would not have gotten as a shift package in 2002?

A No, not in terms of the basic incident reports, that hasn't changed.

* * *

[45] Q Let me ask it a different way. Other than a policy promulgated by the Lehigh County Department of Corrections, are there any other entities that have promulgated policies by which you are bound?

A By which I am bound, no.

Q By which the prison is bound.

A No.

Q So any policies that you have to follow – that the prison must follow are those promulgated by the Lehigh County Department of Corrections?

A Yes.

Q Anything that is promulgated by the Pennsylvania Department of Corrections, it has no binding effect on you as a county prison?

A Only if it is in Title 37.

[46] Q Of the code or of the statutes?

MR. LOUX: The Code.

THE WITNESS: If you say so.

BY MR. DERATZIAN:

Q We're talking about as opposed to something enacted by the legislature or something that is created by the Pennsylvania Department of Corrections in the Administrative Code.

A Yes.

Q The regulations.

A Yes.

Q I assume that you at some point in familiarizing yourself with Pennsylvania law and keeping yourself up to date you actually read the Pennsylvania regulations as applying to county prisons?

A Yes.

Q Would you agree with me that they more or less dictate the sorts of policies you are required to have, but don't really tell you what those policies have to be?

A Title 37 back then at any rate was very nondefinitive for the most part.

Q In other words, as I have read it, it suggests that you should have a policy on mental [47] health, you should have a policy on health in general and things like that, but it doesn't tell you what the guidelines should be?

A There might be some details that they specify, but very few.

Q Would you agree with me that Title 37 doesn't specify what your suicide prevention policy has to be?

A I would agree with that, yes.

Q Just you have to have one?

* * *

[56] Q How would it come about or how was it supposed to come about that inmate monitors were put into place?

A Basically, from the medical staff. They would direct it.

Q How were inmate monitors selected?

A I don't know the exact process of selecting them. I can speculate.

Q Well, let's start out with, who was doing the selecting?

A I believe it came through the treatment department. The medical department had to work with the treatment department who would identify the potential inmate monitors.

Q What is the treatment department?

A The treatment department is the department that is made up of case management, classification, jobs, programming.

Q What is the medical department?

A The medical department is the department [57] that provides medical care – professional medical care for psychiatric, medical, et cetera for the inmates.

Q Is that entirely outsourced, the medical department?

A Now?

Q Well, let's just talk about 2002. As of 2002 was the medical department completely outsourced?

A Yes.

Q Was that to an entity known as Wexford?

A Wexford Health Sources, I believe, was their name.

* * *

[71] Q Can you explain to me how a cell is designated as a suicide cell in this system?

A It has to be an open bar grilled cell and it has to have sightlines – the best sightline available from the booth.

Q Who makes the decision of what cells will be suicide cells?

A I guess ultimately I sign off on it, but based on the recommendation of other people.

Q What other people or what other types of people, if you can't give me names?

A I believe it was a combination of custody and treatment staff.

Q Is open bar and good sightlines the only criteria for a cell being designated a suicide cell?

A I believe so.

Q Does Director Sweeney have any involvement in designating a suicide cell?

A I don't think so.

Q Now, the only cell I have seen is 3223 that's designated as a suicide cell. Is that still [72] designated as a suicide cell?

A As far as I know.

Q You have never undesignated it as a suicide cell?

A No.

Q As far as you know it was designated as a suicide cell in December of 2002?

A I don't know if it was formally designated back then or not. I don't know if any cells were formally designated.

Q As things stand today is there a written document that formally designates a cell as a suicide cell?

A Yes.

Q Do you recall there being written documents on or before December of 2002 that formally designated a cell a suicide cell?

A I don't believe that there were.

* * *

[73] Q I'm going to try to describe 3223 and I'm going to ask you a question. As I recall, 3223 has an open bar door. And if you go straight back, there is a bed – a cot and then off to the left is a desk [74] area and a toilet area. Does that sound about right?

A I believe so.

Q As I saw it, the desk and the toilet bowl area are recessed from the open area of the bars. Do you agree with that? In other words, let me ask it a different way. In other words, the bars are not as wide as the whole cell; correct?

A That's correct.

Q And there is a solid wall area behind which is the toilet and the desk?

A An angled wall.

Q Are there any cells that were used as suicide cells in 2002 that were not designed exactly like that?

A No.

Q Have you ever had occasion to be in the control booth on 3C?

A Sure.

Q Would you agree with me that if you are in the control booth you don't have a sightline to the toilet area in 3223?

A I would have to actually stand there and look. I mean, I have never really stood there and looked at 3223 specifically to see what I could see.

Q As of December of 2002 had you ever stood [75] and looked at the view provided for any suicide cell from any control booth?

A No.

Q If someone is on close observation, who is supposed to be doing the observing?

A The corrections officer.

Q Some of the corrections officers have described the situation as there generally being three corrections officers to a unit. Is that typically the case in this prison?

A No.

Q How is it typical in this prison?

A How is what typical?

Q How many officers to – other than at night, how many COs to a unit?

A To a general population unit, one. At that time, one.

Q What about to a – what are we calling AS/DS, special management or –

A Well, you'll find a number of different designations. Some people will call it RHU, Restricted Housing Unit, others will call it the BAU, Behavioral Adjustment Unit. That is really kind of an archaic name that we don't use. It is AS/DS.

Q Were there more officers assigned to [76] AS/DS?

A Yes.

Q Would that be three to a unit?

A That was – well, that's the only AS/DS unit. So three, yes.

Q Of the three who was supposed to be doing the close observation?

A Any one of the three. I don't believe that it is specifically designated.

Q Are you aware of any common practice that the close observation is performed only by the booth officer?

A No.

Q Is that the way it is supposed to be?

A No, I don't believe so.

Q Do you know of any reason why the officers should actively share the duty of close observation?

A Say that again.

Q Is there any reason why the officers should actively share the duties of close observation?

A They are equally responsible for the care, custody, and control of the inmates. So it would make sense that they would share those duties [77] as well.

Q Do you know of any reason why the duties should not be limited to the booth officer only?

A Do I know of any reason why the duty should not be limited?

Q Bad question. Do you know of any reason why the booth duties should not be performed only by the booth officer?

A Again, they are all responsible for the care, custody, and control of the inmates.

Q Am I correct that the booth officer barring some personal need is supposed to remain in the booth throughout his or her shift or barring an emergency?

A Sometimes what happens is the booth officer will go in and make a round and someone else actually then takes his position. So he is not restricted. If he wants to go in and do a round, he is certainly permitted to do that.

Q So if one person is scheduled to be the booth officer, he is not tied to the booth, he can walk around if he wants to?

A Well, his primary duty is the booth and the expectation is that he is going to be the person primarily pushing the buttons, but that doesn't mean [78] that he can't go in and walk around.

Q Am I correct that the shortest – let's move off of close observation and go to suicide precautions, which I understand to be the next higher level of observation, is that correct, under the Lehigh County Prison policy?

A Yes.

Q What does that mean?

A What does what mean?

Q What does suicide precautions mean?

A Suicide precautions involves a more elaborate procedure. The inmate's possessions are taken away from him. He may be or he is stripped of his clothing, extraneous materials are removed from the cell, and he is given a blanket – this is under now the 2001 policy – given a blanket, and then is put under a more frequent observation.

Q As I understand it, the most frequent observation the policy dictates is 15 minutes; is that right?

A Correct.

Q Now, if you know this, I'm going to make myself one of the doctors working in the health unit and I want to designate someone as needing more frequent observation, can I do that?

[79] A Yes.

Q How would I do that?

A Issue a medical order.

Q But I want the person to be observed more than the policy relates to, more than 15 minutes?

A Yes.

Q I'm allowed to do that?

A Yes.

Q How do I know that?

A I don't know the answer to your question.

Q If you know the answer to this, if I'm a doctor and I'm a brand new Primecare doctor, am I given some material by the prison that tells me the rules under which I operate?

A We have a number of policy books throughout the prison. One of them is located in the medical department and it contains the prison policies. That is there for the referral of the staff – for the use of the medical staff. They have their own set of policies also.

* * *

[80] Q Had you ever read anything or been present for any lectures or in any way come to any information that housing suicide risks on AS/DS units was a bad idea?

A No.

* * *

[82] Q Have you ever read any published guidelines for what a suicide cell should look like?

A I believe there is some guidelines in the NCCHC that talk about that.

Q Do they not suggest that the door be made of a resistant clear material?

* * *

[84] Q Well, wouldn't a cell with a solid clear door be isolated enough to prevent inmates from passing things into the cell?

A I don't think so.

Q Why not?

A Because I don't believe that is a good idea, number one – your suggestion. And, two, I don't necessarily believe that it is going to be totally sealed.

Q Why do you believe that is not a good [85] idea having a solid clear door?

A Because I believe that in very short order that clear material whatever it is made of would be scratched to the point where it would be opaque. Graffiti is a fact of life.

Q Well, presumably we have someone who has no possessions, correct, because they are on suicide

precautions; correct? So they shouldn't have anything that they can use to scratch with.

A Well, they have feces.

Q Well, would you agree – and I don't mean to nitpick – would you agree with me that that is not an abrasive substance?

A That is correct, but –

Q So why else would that be –

A Because the inmate –

Q – a bad idea?

A If there is someone who is not on suicide precautions, that person could be in that cell.

Q Is there any particular reason why there isn't at least one cell designated solely for someone on suicide precautions in this facility?

* * *

[111] Q As you testified there were three officers on AS/DS except for nighttime; is that correct?

A Yes.

Q And is it correct that there is one officer in the booth, two officers who walk the pod?

A Yes.

Q Is any one officer supposed – any one position, not an individual officer, but any one assigned

position supposed to be in charge of observing suicide precaution inmates?

A No.

Q Is it acceptable that it is the booth CO who checks on suicide precaution inmates?

[112] A As long as he can see them.

Q So is it appropriate if the suicide precaution inmate is in a cell – open barred cell where he can be seen that the CO in the booth is the one that does the routine checks on him? Is that appropriate?

A Yes.

* * *

[113] Q As of November or December 2002 to the best of your knowledge did doctors order checks on suicidal inmates that were more frequent than 15 minutes?

A That has happened, yes.

Q Do you know if it happened at that point or prior to that point?

A Prior.

Q So the doctors – let me back up. Not so much doctors, but the med staff as a whole were aware they could authorize anything from constant observation to half an hour checks to something less frequent?

A That's my recollection.

Q You were queried, I believe, about clear plastic doors or clear doors for inmates on suicide precautions. Could feces cover those doors very quickly?

A Yes.

Q Would it be practical to clean that door fast enough to secure the inmate?

A You would have to remove the inmate from the cell and then clean it and then put the inmate back in.

[114] Q Is it your belief that inmates of that nature put in there because of suicide precautions would indeed do that to the doors on a somewhat regular basis?

A The inmates are very creative in their use of feces.

* * *

[122] Q If medical wrote an order for constant observation, could that be implemented? As things stood in December of 2002 could that have been implemented?

A I believe you could have, yes.

Q How?

A By putting an officer on the inmate.

Q Right outside the door?

A We have done that.

* * *